

UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

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July 1, 2004

CERTIFIED-RETURN RECEIPT REQUESTED

International Union of Operating Engineers, AFL-CIO, Local 670
Mr. Elva R. Campbell, Business Manager
P.O. Box 2418
Ardmore, OK 73401

RE: Wynnewood Refining Company
Case 17-UC-246

Dear Mr. Campbell:

The above-captioned case, petitioning for an investigation and determination of representation under Section 9(a) of the National Labor Relations Act, has been carefully investigated and considered.

CONCLUSION

Because it appears that a clarification of the collective-bargaining unit is unwarranted in this matter, the petition is dismissed.

FACTS

The investigation disclosed that, since in or about 2002, the Employer has operated the facility at which it produces asphalt. The parties have a collective-bargaining agreement (CBA) effective from June 15, 2002, to June 15, 2006. As reflected in Article 2 of the CBA, the Union represents employees in the following collective-bargaining unit:

All hourly paid Production and Maintenance employees of Wynnewood Refining Company employed at its Wynnewood, Oklahoma, refinery, exclusive of all other employees including all office and plant clerical employees, administrative employees, professional employees, technical employees, janitors, guards and all supervisors as defined in the Act.

The CBA covers the wages, hours and working conditions of bargaining unit employees.

In 2003, the Union learned that the Employer planned to open a new asphalt unit, which would produce a blend of polymer and asphalt. In March 2004, the Employer opened the unit, known as the "PMA unit." Since March 2004, the Employer has staffed the PMA unit by assigning bargaining unit employees to work overtime in the PMA unit. It appears that the Employer has hired no new employees to staff the PMA unit. It is undisputed that, at all times, the Employer has maintained wages, hours and working conditions for employees working in the PMA unit consistent with the terms of the CBA and has otherwise applied the contract to the employees working in the PMA unit.

Between April 29 and May 6, 2004, the Union and the Employer exchanged correspondence concerning the PMA unit. The Union requested to bargain over the terms and conditions of employment for employees working in the PMA unit. The Employer took the position that the CBA covered work in the PMA unit and that it was not obligated to bargain further until the CBA expires.

In its petition, the Union proposes to clarify the bargaining unit as follows:

Included:

All hourly paid production and maintenance employees of the Employer employed at its Wynnewood, Oklahoma, facility, *including PMA unit employees*;

Excluded:

All other employees, including all office and plant clerical employees, administrative employees, professional employees, technical employees, janitors, guards and supervisors as defined in the Act.

ANALYSIS

A unit clarification may be appropriate for resolving uncertainties concerning the unit placement of employees in a new part of an employer's facility. Union Electric Co., 217 NLRB 666, 667 (1975). Here, it appears that there is no uncertainty regarding the placement of PMA unit production and maintenance employees in the bargaining unit. Rather, the parties agree that all production and maintenance employees should be placed in the bargaining unit. Consistent with this understanding, the Employer has applied the terms of the CBA to work performed in the PMA unit. Because there is no dispute concerning the placement of these employees in the bargaining unit, clarification of the unit is unwarranted.

RESULT

I am therefore dismissing the petition.

APPEAL RIGHTS

Your rights for requesting a review of the foregoing ruling and all necessary information are set forth on the attachment.

Sincerely,

/s/ **Leonard P. Bernstein**

Leonard P. Bernstein
Acting Regional Director

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3811 Turtle Creek Blvd, Ste. 500
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Wynnewood Refining Company
Mr. David Roderick, Vice President,
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Wynnewood, OK 73098

FORM NLRB-4767
(7-03)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

TO: General Counsel
Attn: Office of Appeals
National Labor Relations Board
Room 8820, 1099th 14th Street, N.W.
Washington, D.C. 20570-0001

DATE:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

Case Name(s)

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

(Signature)